

**SUPERIOR COURT OF CALIFORNIA,  
COUNTY OF SAN DIEGO  
HALL OF JUSTICE**

**TENTATIVE RULINGS - September 10, 2007**

EVENT DATE: 09/11/2007                      EVENT TIME: 10:00:00 AM                      DEPT.: C-71  
JUDICIAL OFFICER: Ronald S. Prager

CASE NO.: JCCP4221  
CASE TITLE: JCCP4221 COORDINATION PROCEEDING NATURAL GAS ANTI-TRUST CASES

CASE CATEGORY:    Civil - Unlimited                                      CASE TYPE:    Antitrust/Trade Regulation

EVENT TYPE:    Motion Hearing (Civil)  
CAUSAL DOCUMENT/DATE FILED:

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The Court rules on independent plaintiff City of Los Angeles by and through the Department of Water and Power's ("LADWP") motion to sever and grant relief from stay as follows:

As a preliminary matter, defendant Mary Kathleen Zanaboni filed a joinder to Reliant's opposition.

Code of Civil Procedure section 1048 subd. (b) ("section 1048") provides that a court may order separate trials "in furtherance of convenience or to avoid prejudice" or when it would "be conducive to expedition and economy." Code of Civil Procedure section 598 ("section 598") provides that a court may order certain issues tried before others "when the convenience of witnesses, the ends of justice or the economy or efficiency of handling the litigation would be promoted thereby." Whether a motion for separate trials should be granted or denied lies within the court's sound discretion. (*Grappo v. Coventry Fin. Corp.* (1991) 235 Cal.App.3d 496, 504.)

In LADWP's moving papers did not set forth the applicable statutes and cases for evaluating the motion and provided no basis under the criteria set forth in section 1048 and 598 for granting this motion. Alternatively, LADWP asked the Court for leave to amend the first amended complaint ("FAC") but failed to comply with the requirements of California Rules of Court, rule 3.1324. More specifically, it failed to file a proposed amended complaint, state what allegations were to be added or deleted, and did not provide a supporting declaration with its moving papers which stated the effect of the amendment, why it is necessary, when the facts giving rise to the amended allegations were discovered, and why the request for amendment were not made earlier. (*Ibid.*) In an effort to remedy these defects, LADWP addressed the criteria noted above in response to the arguments made by defendants Reliant Energy Services, Inc. ("Reliant") and Coral Energy Resource, L.P. ("Coral") in their opposition briefs and provided a proposed an amended complaint with its reply brief. This, however, raises due process concerns since neither Reliant nor Coral had the opportunity to address the arguments LADWP made in its reply.

LADWP did not deny that certain witnesses might need to be deposed twice (i.e., LADWP's GM). This could create problems since Code of Civil Procedure section 2025.610 subd. (a) only allows a single deposition of a witness absent a showing of good cause by the party seeking a second deposition. LADWP also did not deny that discovery disputes regarding the scope of discovery may arise. Finally, granting the motion may create problems of delay given California's one judgment rule. (*Morehart v. County of Santa Barbara* (1994) 7 Cal.4th 725, 743.)

In addition, Reliant and Coral correctly noted that each of the FAC's claims incorporate the factual allegations in paragraphs 39-114, which include allegations of a conspiracy to manipulate natural gas prices through misreporting to trade publications, wash trades, and churning. These allegations form the basis of LADWP's Cartwright Act claim and are specifically pled as elements of the non-Cartwright claims. (FAC, ¶¶117, 123, 129, 139.) LADWP's proposed amendment actually substantiates Reliant and Coral's contentions because it makes clear that each of its causes of

action is based on the allegations for the Cartwright Act claim.

The Court notes that arguments concerning the applicability of preemption and the filed rate doctrine were made by the parties. The Court declines to address these arguments given the fact that the Court stayed the action on these issues pending a ruling from the Ninth Circuit.

Based on the foregoing, the motion is DENIED.

IT IS SO ORDERED.